JOHN T. FEY, Clerk

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IN THE

Supreme Court of the United States

OCTOBER TERM A. D. 1956

No. 523

ALVA G. BLANCHARD,

Petitioner

versus

ROBERT C. WATSON, Commissioner of Patents,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

ALVA G. BLANCHARD
3618 Fairfield Avenue
Shreveport, Louisiana
In propria persona,
for Petitioner.

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SUPREME COURT OF THE UNITED STATES

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NO. _____

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vs.

ROBERT C. WATSON, Commissioner of Patents,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Alva G. Blanchard, your petitioner, prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit, decided in the above entitled case on May 31, 1956.

OPINIONS BELOW

The Court of Appeals affirmed (Appendix A, page A10) on the opinion of Judge Morris of the United States District Court for the District of Columbia, which opinion (Appendix A, pages A7-A9) is reported at 132 Fed. Supp. 744.

JURISDICTION

The judgment of the Court of Appeals was decided on May 31, 1956 (Appendix A, Page A10). The jurisdiction of this Court is invoked under the provisions of 28 U. S. C. A. §1254 (1), Appendix D, pages D2 and D3.

QUESTIONS PRESENTED

1. In a patent matter, can a Patent Office rule which prohibits reservations of subject matter disclosed but not claimed in a pending application be construed to also apply to a reservation in an amendment, made in good faith by the petitioner on the suggestion of the examiner of subject matter both claimed and disclosed.

2. In a patent matter, may prior art patents not cited by the Examiner in the patent office be introduced for the first time in the District Court with no expert testimony as to their pertinency and bypass Rule 106 of the Rules of Practice in the United States Patent Office, Appendix D, page D6, which provides in part:

> "- - - In rejecting claims for want of novelty or for want of invention, the examiner must cite the best reference at his command. - - - - - The pertinence of each reference, if not obvious, must be clearly explained and each rejected claim specified."

or should the case be remanded to the Patent Office for a proper rejection in accordance with said Rule 106?

3. In a patent matter, may claims in a pending application be rejected by citing prior art references that may accomplish similar results but in a different manner with more and different elements than are contained

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in the rejected claims?

4. In a patent matter, was there continuous prosecution of the subject matter of three (3) generic claims from an original application, which would bar the use of a species claim patent issued in a co-pending application as a reference?

STATUTES AND REGULATIONS INVOLVED

The statutes and regulations involved are set out in Appendix D, Pages D1 - D6.

STATEMENT

This action originated under the Patent Laws of the United States in the rejection of generic claims 1, 2 and 3 in a divisional application filed March 4, 1945, Serial No. 581,373. (Appendix B, page B2, lines 3 and 4).

This is a divisional application and was divided by requirement from an earlier divisional application filed February 20, 1941, Serial No. 379,822 in which the rejected claims appeared substantially the same as claims 8, 9 and 10. (Appendix B, page B1).

This divisional application was divided at the suggestion of the patent office from an earlier original application filed October 14, 1935, Serial No. 44,988, in which the subject matter of claims 8, 9 and 10 appeared as generic claim 15. (Appendix B, page B1).

After the original application was filed containing generic claim 15 on October 14, 1935, an active infringement was attracted. To meet this active infringement, an application was filed containing only species claims of Petitioner's invention, on May 28, 1938, which was assigned

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Serial No. 210,585. (Appendix B, page B1). It was made "special" as the active infringer also put in an application for a patent and an interference proceeding developed. The infringer's earliest date of conception was after petitioner's filing date, and the interference was settled with the patent issued to appellant on May 7, 1940, No. 2,199,611, (Appendix C, pages C1 to C3), which is petitioner's species patent in the co-pending application.

Prosecution of the original application with generic claim 15 and others continued. The requirement for division was contested and finally all claims were rejected, with the Examiner's statement to the Board of Patent Appeals containing the following statement:

> "Claims 15 to 17 stand rejected on House in view of Fulton as urged in connection with claims 1 to 5. These are organization claims. Therefore, the Examiner does not consider that specific features of appellant's valve construction are germane to the invention claimed. The Examiner has held that any novelty in appellant's valve construction per se is subject matter for separate applications." Emphasis ours. (Appendix B, page B3).

The Board of Appeals sustained the Examiner (Appendix A, pages A3 to A6), except as to claim 14, which was allowed. This decision was appealed to the District Court for the District of Columbia. While the case was waiting for trial, appellant had a conference with the Examiner which resulted in the following agreement:

1. That the case would be withdrawn from the District Court.
2. That claim 14 and similar claims would be allowed on the original application.

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3. That appellant would cancel all claims except 14 and refile the subject matter of the cancelled claims before the patent issued on the original application.

Pursuant to this understanding, petitioner directed a letter to the patent office on April 6, 1940, setting out additional claims similar to claim 14 and withdrawing all other claims in the following words:

> "Cancel all claims except 14 and applicant reserves the right to amend the cancelled claims and make them the subject matter of divisional applications." (Appendix B, page B3, lines 1 to 3).

Petitioner started the preparation of the divisional application to contain the subject matter of the withdrawn claims and it appearing that the application could not be completed before the Patent would issue on the original application with claim 14 and similar claims, a delay in issue was asked for and granted. The request was dated December 5, 1940, as follows:

> "At this time we have another application pending, which is a partial division of this application, but we have not quite completed it for filing yet.
>
> We would therefore, like to have the publication of this patent, (Application No. 44,988) held ninety days, or the limit for getting this out." (Appendix B, page B3, lines 15 to 19).

In due course the divisional application with the generic subject matter of Claim 15, as claims 8, 9 and 10 was filed on February 20, 1941, Serial No. 379,822, which was about two weeks before the patent issued on the original application Serial No. 44,988 on March 4, 1941, No.

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2,233,395.

Prosecution of the aforementioned application Serial No. 379,822 with generic claims 8, 9 and 10, containing the subject matter of generic claim 15 was continued until division was required again, at which time generic claims 8, 9 and 10 were continued as claims 1, 2 and 3, in a divisional application Serial No. 581.373, filed March 7, 1945, which was almost a year before the patent issued on application Serial No. 379,822, on February 19, 1946. No. 2.395,212. Claims 1, 2 and 3 are the claims in suit and were rejected only for double patenting, citing as a reference petitioner's patent No. 2,199,611 of May 4, 1940.

Petitioner reminded the examiner that such a reference as this, a species patent issued on a co-pending application, should not be used, and that claims 1, 2 and 3, through claims 8, 9 and 10, had their origin in claim 15 of the original application. The patent office then contended that claims 8, 9 and 10 were not the same as claim 15, in spite of the fact that every element of claims 8, 9 and 10, as well as claims 1, 2 and 3 are present in claim 15.

The patent office then claimed the reservation clause could be separated and that part of the sentence "cancel all claims except 14" could be taken alone out of context with the balance of the sentence, as cancelling the claims so as to establish a hiatus from the date of the cancellation reservation sentence and the refiling date, during which time the species claim patent issued.

The patent office further ruled that the lapse of time between April 6, 1940 when claim 15 was withdrawn for refiling, and February 20,

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1941, when claims 8, 9 and 10 were filed created a fatal hiatus insofar as claims 1, 2 and 3 are concerned. Petitioner then advised the examiner that the withdrawal was not a cancellation period, but was a cancellation with a reservation that had for its effect the withdrawal of the subject matter.

When no relief was granted to petitioner in the patent office, a petition was filed in the United States District Court for the District of Columbia. At the time of the filing of this petition, the disputed claims had been rejected by the examiner only for double patenting.

In the District Court, it was suggested that the cancellation-reservation clause was void under Rule 44, and therefore the hiatus existed and the species claim patent barred the three generic claims. Also that the claims were anticipated by three old prior art patents. The Court of Appeals upheld these views.

REASONS FOR GRANTING THE WRIT

The court below made two mistakes.

It held that Rule 44 applied so as to create the fatal hiatus during which time the species claim patent issued and that the prior art patents did preclude the issuance of the patent without any evidence whatsoever that they contained elements that did perform the functions of the three rejected claims.

1. "Rule 44. A reservation for a future application of subject matter disclosed but not claimed in a pending application will not be permitted in the pending application." Rules of Practice in the United States Patent Office.

To understand how Rule 44 was applied by Judge Morris in the

District Court, and why it does not properly apply, consideration must be given to several events which occurred before Rule 44 was brought into the case. Under the reasoning of Judge Morris, his sole justification for applying the rule is the allegation that there existed a period between April 6, 1940, when Claim 15 of Application No. 44,988 was withdrawn for refiling and February 20, 1941 when Claims 8, 9 and 10 were filed in Application No. 379,822 when the subject matter of Claim 15 was disclosed (in Application No. 44,988) but not claimed, and as a matter of fact was not claimed until it was refiled as Claims 8, 9 and 10 of Application No. 379,822. This reasoning is obviously faulty. A consideration of the conditions at the time of making Rule 44 clearly shows the error in applying this rule in the present case.

Rule 44 was passed to take care of a particular historical situation which existed up until its passage. Prior to the passage of Rule 44, the question of reservations in applications was discussed in Ex Parte Blair, 188 C. D. 16. In that connection the Commissioner stated:

> "I understand that it has uniformly been the practice of the Office to require the reservation Clauses in applications to be stricken out in order to compel the applicant to file his second application and have it pending concurrently with the first, and when that has been done and the merits of the application have been settled, to consider whether cross references are necessary and whether patents should issue at the same time . . . . . he has filed a separate application for the process but he has not yet filed an application for the apparatus, and he may never do so; but by introducting a reservation clause into the present application and carrying it into his patent, in case one were granted, he would thereby

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> erect a warning by which the public would be deterred from entering upon this field of invention, and also would be prevented from knowing just what property it was purchasing in dealing with such a patent . . . . . This is the policy of the requirement, and it is the only power the Office possesses by which it can control to this extent the action of applicants, protect the public against the extension of a monopoly. and secures their rights to the unclaimed inventions shown in patents . . . . . In my opinion, there should be a rule forbidding the introduction of reservation clauses in applications; but I feel satisfied that, in the absence of the rule, the Commissioner has the power, and it is the proper practice, to discourage their employment and to require their cancellation." (Emphasis ours.)

This would indicate that the situations which brought about Rule 44 were where an applicant seeks to make reservations in the body of the application as distinguished from an amendment preparing the application for allowance.

To better understand the problem of applying Rule 44 it helps to reduce it to its essential elements: (1) a reservation (2) in a pending application (3) for a future application and (4) for subject matter disclosed but not claimed in the pending application.

The first two elements of Rule 44 contemplate a reservation in a pending application. In the case at bar, the reservation involved was not made in an application, but was made in an amendment to the application pursuant to a suggestion of the examiner. The words of the cancellation were:

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> "cancel all claims except 14 and applicant reserves the right to amend the cancelled claims and make them the subject matter of divisional applications."

It is obvious from this wording that the cancellation depended for its validity upon the validity of the reservation. The solicitor for the patent office has taken the attitude that the words "cancel all claims except 14" may be removed from context and be taken to mean that an absolute cancellation was intended when petitioner's obvious intention was to withdraw all claims except 14 pending their refiling in divisional application. Petitioner never doubted the validity of the reservation since it not only was made at the suggestion of the examiner, but was not a part of the application as is required by Rule 44. An application is defined as:

> "51. General Requisites of an Application. Applications for patents must be made to the Commissioner of Patents. A complete application comprises:
>
> (a) A petition or request for a patent, see Rule 61.
>
> (b) A specification, including a claim or claims, see Rules 71 to 77.
>
> (c) An oath, see Rule 65.
>
> (d) Drawings when necessary, see Rules 81 to 88.
>
> (e) The prescribed filing fee. (see Rule 21 for filing fees.)"
> Rules of Practice in the United States Patent Office. (Emphasis ours.)

While transactions occurring between the applicant and the examiner subsequent to the filing of an application all go to make up part of the "file wrapper," material not actually a physical part of the application as defined by Rule 51 would not come within the purview of Rule 44. It is accordingly submitted that the first two requisites of Rule 44, (1) a reser-

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vation (2) in a pending application, are not met in this case.

Rule 44 also requires that the reservation, to be invalid, must be a reservation which applies to subject matter disclosed but not claimed in the pending application. In this case, the subject matter was always disclosed as Claim 15 and was claimed first as Claim 15, then as Claims 8, 9 and 10, and now as Claims 1, 2 and 3. It is obvious then that this requirement of Rule 44 is not met.

To clear up any ambiguities which had previously existed, and which caused misapplication as in the case at bar, Rule 44 has been replaced in the Rules of Practice by Rule 79, which reads as follows:

> "79. Reservation Clauses not Permitted. A reservation for a future application of subject matter disclosed but not claimed in a pending application will not be permitted in the pending application, but an application disclosing unclaimed subject matter may contain a reference to a later file application of the same applicant or owned by a common assignee disclosing that subject matter." Rules of Practice in the United States Patent Office, September 1955.

This language clearly shows that there was never any intent for Rule 44 or Rule 79 to apply in such cases as this. To apply Rule 44 as it has been applied in this case, amounts to tricking an applicant into losing valuable claims by permitting the Patent Office to:

(1) Suggest to an applicant that subject matter of certain claims might with impunity be made the subject matter of separate applications by making a reservation by amendment;

(2) After a good satisfactory cancellation with a reservation of the subject matter of the cancelled claims of the original application, allowing the invocation of Rule 44 to nullify the reservation by improperly applying Rule 44; and

(3) Permitting a cancellation by denying the reservation on which said cancellation was based.

To sanction this line of reasoning as the district court and court of appeals have done leaves the door open for the Patent Office to practice trickery in getting applicants to lose valuable claims that they would otherwise be entitled to, and would cause unwary applicants to lose valuable patent rights without due process of law as guaranteed by the United States Constitution.

2. The Courts below erred in regard to the prior art in two respects:

1. The prior art was introduced by the solicitor in direct contravention of the Rules of Practice in the United States Patent Office.

2. The prior art cited does not read on petitioner's invention.

In this case. Petitioner's generic claims 1, 2 and 3 have been rejected (1) on double patenting citing Petitioner's species claim Patent No. 2,199,611 of May 7, 1940 and (2) for anticipation in the old prior art as shown by the following: (See Appendix C, pages C1 to C13)

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Singleton, Re. 7,767, June 26, 1877

McLaughlin, 458.794, September 1, 1891

Clark 683,021, September 24, 1901.

The prior art cited should have been disallowed by the District Court purely on the strength of Rule 106 of the Rules of Practice in the United States Patent Office:

> "106. Rejection of claims.
> If the invention is not considered patentable, or not considered patentable as claimed, the claims, or those considered unpatentable will be rejected.
>
> In rejecting claims for want of novelty or for want of invention the examiner must cite the best reference at his command. When a reference is complex or shows or describes inventions other than that claimed by the applicant, the particular part relied on must be designated as nearly as practicable. The pertinence of each reference, if not obvious, must be clearly explained and each rejected claim specified." (1955 Rules of Practice in the United States Patent Office)

The prior art should not have been admitted to the lower Court because there was no witness to testify as to its pertinency or that it was "newly" found. Had there been, Petitioner could have discredited it by cross examination or other witnesses to the contrary.

Had it been cited by the Patent Office, the Examiner, as required by Rule 106 of the Rules of Practice in the United States Patent Office, would have been required to explain clearly exactly how the references applied to the claims rejected. If the examiner was not correct, it would be perfectly clear to any later reviewing court. The Petitioner is entitled to this clear explanation that the rule says "must" be given when rejecting

a claim; the patent law puts the burden of proof on the Examiner to explain how a prior art patent negatives invention as stated in Rule 106, and by considering this prior art without the Patent Office first having considered them, and giving their reasons in writing, the burden was shifted to the applicant, which was obviously not the intent of the patent law.

From reading Judge Morris' memorandum, Appendix A, pages A7 to A9, it is obvious that the prior art cited was misapplied in the District Court. Judge Morris said of the prior art patents that they "have elements which perform the functions of the elements in plaintiff's claims, and do preclude the issuance of patents on such claims." A prior art patent sufficient for the examiner to use as an anticipation must have all of the same identical elements of a claim in order to disallow the claim on the prior art. In this instance, though cited separately and not in combination, all of the prior art cited put together does not have all of the elements of any of the three rejected claims. It should be noted that Judge Morris of the District Court did not say that the prior art had all of the elements of each rejected claim, but "have elements which perform the functions of elements in plaintiff's claims, and therefore preclude the issuance of patents on such claims." This wording of Judge Morris' judgment shows that he was mistaken in his conception of the law. The law is, to negative invention, the prior art must disclose the combination of the same elements in a claim, because it is the combination of elements that makes the claim and not their function.

The law on what constitutes prior art is well settled as expressed in Walker on Patents, Vol. 3, Deller's Edition:

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> "§ 461 - Omission -
> Omission of 1 element or ingredient of a combination covered by any claim of a patent, averts any charge of infringement based on that claim."
> 10 or more citations beginning with Prouty v. Ruggles 16 Pet. (41 U.S. 431, 1842)and ending with Weatherford v. Coupe 147 U.S. 322, 1893"

The law as to the necessity of using all the elements of a claim in order to infringe that claim is expressed on page 1697 of the same reference as follows:

> "A combination is an entirety. If one of its elements is omitted, the thing claimed disappears. Every part of the combination claimed is conclusively presumed to be material to the combination, and no evidence to the contrary is admissible in case of alleged infringement." About 15 cases are cited as holding this law, beginning with Vance v. Campbell, 1 Black (66 U.S.) 427, 450; 17 L. Ed. 168 (1891) and ending with Electric Protection Co. v. American Bank Protection Co. 184 Fed. 916 (1910).

The law as to the avoidance of infringement by leaving out one element is set out on page 623 of Patent Law and Practice by Amdur as follows:

> "In other words, if a patentee introduces an unnecessary element into the claim for his invention, and another discovers that such element is unnecessary or superfluous, and thereby does not use it, but makes a structure otherwise identical with that of the patent, is he an infringer? This point has been passed upon many times -- the defendant does not infringe the claims in issue." Loraine Development Co. v. General Electric Co. 198 Fed. 100, 113, 116 (N.D. N.Y. 1912).

From the foregoing law the conclusion must be that elements of claims are limitations and are strictly construed.

To determine whether or not a prior art patent anticipates a proposed claim, it is the general practice to separate the proposed claim into its elements and then lay each one of these elements over the cited reference. If each of the elements is present in the reference, the claim is, of course, unpatentable. If each of the elements is not present in the reference, the reference is inadequate as it is the combination of elements that makes the claim.

The art cited is completely without merit and was an obvious subterfuge on the part of the Solicitor for the Patent Office to cloud the issue. It appears that the art cited is just something that the Patent Office turned up from its indices that looks something like Petitioner's device.

3. There has been no double patenting, and therefore no hiatus in suit. The law is old and very clear that a species claim patent in a divisional application may not be used against generic claims not yet allowed that have been continuously prosecuted from the original application.

> "Where species claim issues on an application which is a division or continuation in part of an earlier application containing generic claims, the generic claims may issue last provided they have been continuously prosecuted from the beginning. The issued species claim patent may not be cited against the generic claims that have not yet been allowed." Ex Parte Reuter, 61 U.S.P.Q. 65; Vapor Car Heating Co. v. Gold Car Heating and Lighting Co. 296 F. 188, 16 F. 2nd 194, 268 U. S. 705.

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This law has been further clarified and brought up to date by the Patent Law enacted July 12, 1952 to be cited as follows:

> "35 U. S. C. 121. DIVISIONAL APPLICATIONS. If two or more independent and distinct inventions are claimed in one application, the Commissioner may require the application to be restricted to one of the inventions. If the other invention is made the subject of a divisional application which complies with the requirements of Section 120 of this title it shall be entitled to the benefit of the filing date of the original application. A patent issuing on an application with respect to which a requirement for restriction under this section has been made, or an application filed as a result of such a requirement, shall not be used as a reference either in the Patent Office or in the Courts against a divisional application or against the original application or on any patent issued on either of them, if the divisional application is filed before the issuance of the patent on the other application. If a divisional application is directed solely to subject matter described and claimed in the original application as filed, the Commissioner may dispense with signing and execution by the inventor. The validity of a patent shall not be questioned for failure of the Commissioner to require the application to be restricted to one invention." (Emphasis ours).

Section 4 (a) of the Patent Act of July 19, 1952. (Public Law 593, 82nd Cong., 2nd Sess. ch. 950; 55 Stat. 792) provides:

> "This act shall take effect on January 1, 1953 and shall apply to all applications for patent filed on or after such date and to all patents granted on such applications. It shall apply to further proceedings on applications pending on such date and to patents granted on such applications except as otherwise provided." (Emphasis ours).

Respondent claims that the generic claims 1, 2 and 3 were not in

the original first filed application but were first introduced as claims 8, 9 and 10 on February 20, 1941, and denies claim 15 of the original application contain their substance.

The law appears to be, that to show continuous prosecution of generic claims from the original application, it is not necessary that they be in exactly their same form all the way back. If this were not so, a generic claim could not be amended to meet an Examiner's objection and it could not be put in form for allowance. This view is supported as follows:

> "No rule of law compels applicant to put in parent patent containing generic claims all specific claims devisable thereon." Ex Parte Jeffry and Mitchell. (P. O Bd. App.) 60 U S. P. Q. 424.

Petitioner avers that claims 8, 9 and 10 above referred to, are the patentable substance of claim 15 of the original application. Claim 15 is acknowledged to be present in the original application.

Generic claims 1, 2 and 3 in suit are easily shown to be divisible from original claim 15 by comparing the elements of claims 1, 2 and 3 with the elements of Claim 15 from which they are drawn. To facilitate the comparison, it may be stated that generic claims 1, 2 and 3 embrace only one idea or invention. The idea is stated in three claims because the Courts have for many years confirmed an applicant's right to restate his invention in a reasonable number of ways (MANUAL ON PATENT EXAMINING PROCEDURE Section 706. 03 K).

Respondent asserts that even if continuous prosecution of generic claims from the original application could otherwise be shown, claim 15

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was cancelled on April 6, 1940; the application carrying forward the subject matter of claim 15 as claims 8, 9 and 10 was not filed until February 20, 1941, which was al most a year after Petitioner's species patent claim issued on May 7, 1940.

Petitioner denies that claim 15 was cancelled within the usual meaning of the word. It was not cancelled but was withdrawn from the original application as the result of a conference with the Examiner. The purpose of withdrawing claim 15 was to make it and the other withdrawn claims the subject of a new application and for the additional purpose of preparing the additional claims thought allowable at the conference.

The actual wording of this reservation was as follows:

> "Cancel all claims except 14 and applicant reserves the right to amend the cancelled claims and make them the subject matter of divisional applications."

This wording cannot possibly mean anything except that the cancellation was contingent on the allowance of the reservation. The intention was the withdrawal of these claims to refile in another application before the issue of the patent on the original application.

To further show that the wording of Petitioner's letter of April 6, 1940 was intended and accepted only as a withdrawal of these claims for the purpose of refiling them in a divisional application as suggested by the Examiner before the patent issued on the original application S.R. No. 44,988, Petitioner wrote a "delay in issue request" to the Patent Office on December 5, 1940, as follows:

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> "At this time we have another application pending, which is a partial division of this application, but we have not quite completed it for filing yet. We would therefore like to have the publication of this patent (Application No. 44, 988) held ninety days or the limit for getting this out."

This request was granted as the patent on original application S. R. 44,988 issued on March 4, 1941, No. 2,233,395, about two weeks after the generic subject matter of original claim 15 was carried forward in application S. R. 379,822 filed February 20, 1941, as claims 8, 9 and 10.

CONCLUSIONS

The ruling in the Courts below injects uncertainty and inconsistencies into the patent system. This petition for a writ of certiorari should therefore be granted.

Respectfully submitted,

Alva G. Blanchard

Alva G. Blanchard
Petitioner
3618 Fairfield Avenue
Shreveport, Louisiana

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SIDNEY YOUNG, COURT REPORTER, 418 FEDERAL BLDG., SHREVEPORT, LA.

Mailed May 22, 1952

EXAMINER'S STATEMENT

This is an appeal from the final rejection of claims 1, 2 and 3.

Claims 23, 24, 27, 28 and 29 have been allowed.

A correct copy of the appealed claims appears on pages 1 and 2 of the applicant's brief.

The reference relied upon is:

Blanchard 2,199,611 May 7, 1940

The applicant's device is adequately described, for purpose of this appeal, on pages 2 3 and 4 of his brief.

Claims 1, 2 and 3 stand rejected on the ground of double patenting. These claims define nothing patentable over the claims in applicant's patent No. 2,199,611. It is conceded by applicant that broad claims 1, 2 and 3 herein are met by the structure recited in the specific claims in the patent. It is believed clear that the issuance of species claims in the patent in 1940 bars the issuance now of generic claims 1, 2 and 3. Applicant contends that the presentation of a generic claim in his original application 44,988 filed in 1935 gives him the right to have generic claims now. However, the generic claim on which he relies (Claim 15 of application 44,988) was not to the same subject matter as the present claims 1, 2 and 3 since it was drawn to a combination including fluid motor actuated main valves and was not drawn to the float operated valves per se as are the claims at bar.

Regardless of the subject matter of claim 15 of original application

44,988 the important point to note is that such claim 15 was cancelled April 6, 1940 (page 8 of applicant's brief and patent file of patent No. 2,233,395) prior to his filing on February 20, 1941 of application Serial No. 379,822 which contained claims 8, 9 and 10, which correspond to claims 1, 2 and 3 now at bar.

Thus at the time (February 20, 1941) when generic claims 8, 9 and 10 in Serial No. 379,822 were first presented applicant did not have pending in any application a generic claim of any kind, i.e. combination or element claim, and the species claims relied upon in this double patenting rejection had already issued on May 7, 1940. To state the situation in different words. the species claims in the patent relied upon were permitted to issue May 7, 1940 during the hiatus between the cancellation (in Serial No. 44,988, Patent file 2,233,395) of the generic combination claim 15 on April 6. 1940 and the presentation (in Serial No. 379,822 patent file 2,395,212) of generic element claims 8, 9 and 10 on February 20, 1941.

In view of the foregoing, it seems clear that applicant is not now entitled to these generic claims. See Kaplan v. Robertson 9 U.S.P.Q. 563; 50 Fed. (2) 617 and Union Typewriter Co. v. Smith 173 Fed. 288 which are believed to hold that generic claims to the same subject matter must be filed before the species claims issue and that the generic claims must be continuously prosecuted. See also Ex parte Gump 83 U.S.P.Q. 351 which appears to hold that an applicant is not entitled to generic claims after the issuance of specific claims, whether or not he continuously asserted generic claims in his parent cases.

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Acting Examiner.

Mailed Nov. 28, 1952

IN THE UNITED STATES PATENT OFFICE

BEFORE THE BOARD OF APPEALS

Ex parte Alva G. Blanchard

application for Patent filed March 7, 1945, Serial No. 581,373.

Automatic Control Mechanism for Pressure Vessels.

Hamer H. Jamieson for appellant.

This is an appeal from the final rejection of claims 1, 2 and 3.

Claim 1 is illustrative and reads as follows:

> 1. A float chamber, a plurality of fluid passages through the wall thereof, valves in said passages, a float arm privoted adjacent to said passages, a float thereon, and means on the pivoted end of said float arm whereby said fluid passages may be opened in a predetermined order by the fall of said float.

The reference relied upon is:

Blanchard	2,199,611	May 7, 1940

The application is concerned with the sequential control of a multiple valve, the details of which are considered sufficiently set forth on pages 2 and 3 of appellant's brief.

The claims stand rejected on the ground of double patenting in view of appellant's patent 2,199,611.

In reviewing the chronological background of the instant application, it is noted that it stems from an application filed October 14, 1935.

Division was required in this application, and on May 28, 1938 the divisional application resulting in the Blanchard patent 2,199,611, granted May 7, 1940, was filed. The prosecution of the parent continued to appeal, terminating adversely to appellant except as to one claim. Appellant on April 6, 1940 cancelled all claims except the single claim which had been allowed, whereupon the application was in due course passed for issue. On December 5, 1940, delay of issue was requested in order to permit appellant time to file a "partial division" application. Said application was filed as a continuation-in-part on February 20, 1941. In this application division was also required, and on March 7, 1945 the instant application was filed as a result of said requirement.

There appears to be no controversy that the claims here on appeal correspond to claims 8, 9 and 10 of the application filed February 20, 1941. However, it is the Examiner's position that at the time these claims "were first presented applicant did not have pending in any application a generic claim of any kind, i. e. combination or element claim, and the species claims relied upon in this double patenting rejection had already issued on May 7, 1940." Appellant contends that he has attempted to obtain broad generic claims to his "valve construction from the date of first filing Serial No. 44,988 on October 14, 1935" some seventeen years ago. In this connection, he calls attention to claim 15 of said application and contends that this claim covers "the broad generic invention, although covering it in combination with other elements of the system" and

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> "there is no rule of law known to appellant which requires that he claim the generic subject matter in the same form or type of claims in all of his applications in order to avoid questions of double patenting."

We do not believe that in the instant case it is a matter of form or type but a matter of substance of the claims. We do not consider this claim 15, which admittedly contains elements of the system not present in the claims here on appeal, is sufficient to avoid the rejection of double patenting.

We are not unmindful that said claim 15 was rejected on the ground of old combination and the rejection sustained on appeal. However, the fact remains that this claim was not drawn to the same combination as the claims here on appeal and that the latter claims were not presented until more than nine months after the Blanchard patent 2,199,611 issued.

A careful consideration of the law cited by appellant and especially Kaplan v. Robertson, 50 F. (2d) 617, which appears to be directly in point, leads us to the conclusion that the Examiner's position is sound.

We have carefully considered all of the contentions and arguments in appellant's brief, as well as those presented at the hearing, but we are not convinced thereby that there was reversible error in the rejection of the appealed claims.

The decision of the Primary Examiner is affirmed.

H. H. Jacobs
Examiner-in-Chief

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B. H. Carpenter
Examiner-in-Chief
(Acting)

L. M. Andrus
Examiner-in-Chief
(Acting)

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SIDNEY YOUNG, COURT REPORTER, 418 FEDERAL BLDG., SHREVEPORT, LA.

MEMORANDUM OF COURT

Morris, J. This is a proceeding under Title 35, Section 145, U. S. C. (formerly Section 4915, Revised Statutes), for a determination that a patent should issue on claims 1, 2 and 3 in plaintiff's application for a patent, Serial Number 581,373, filed March 7, 1945, for apparatus in connection with the operation of valves in outlets for steam boilers. The defendant asserts that a patent on such claims should not issue in that they are not patentable over Patent No. 2,199,611, issued May 7, 1940 to the plaintiff and, therefore, would constitute double patenting. The defendant also asserts that the claims here involved are not patentable over Patent No. 683,021, issued to Clark, et al. (1901), No. 458,794, issued to McLaughlin (1891), and Patent No. 7,767, issued to Singleton (1877). These last three references were not cited in the Patent Office, but are asserted as authorized by the case of American Steel and Wire Company of New Jersey v. Coe, 70 App. D. C. 138, 105 F. (2d) 17.

There can be no serious question that the claims here involved are generic claims, of which the claims in Patent No. 2,199,611 are specie claims. It is urged, however, by plaintiff that the three claims here involved are substantially the same generic claims as claim No. 15 in his application, Serial Number 44,988, filed October 14, 1935, upon which Patent No. 2,233,395, issued to Plaintiff March 4, 1941, on certain other claims. Pending final action on that application, plaintiff, on April 6, 1940, when it became subject of an amendment to the application, cancelled all claims, except claim 14, stating that "applicant reserves

the right to amend the cancelled claims and make them the subject matter of divisional applications." On February 20, 1941, plaintiff filed an application, Serial Number 379,822, which was co-pending with his application, Serial Number 581,373, from March 7, 1945 until it issued as Patent No. 2,395,212 on February 19, 1946, in which were included claims 8, 9 and 10 that are in substance claims 1, 2 and 3 in the instant suit. It will thus be seen that from the date of the cancellation of claim No. 15, which the plaintiff insists is the progenitor of his present claims, there was no assertion by the plaintiff of generic claims 8, 9 and 10, which are asserted to be progenitors of the instant claims until February 20, 1941, although patent on the specie claims had issued after the cancellation May 7, 1940 and prior to the reassertion of the generic claims similar to the ones here involved.

The law seems to be well settled that no patent on an application with generic claims may issue subsequent to the grant of a patent on claims to one of the included species, unless the generic claims be introduced into the application prior to the issuance of the species patent. The contention of the plaintiff is that his reservation of an intention to amend the cancelled claims and make them the subject of divisional applications kept such claims alive notwithstanding such cancellation.

Rule 44 of the Patent Office provides:

> "A reservation for a future application of subject disclosed, but not claimed, in a pending application will not be permitted in the pending application."

The plaintiff contends that this rule has no application to subject

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matter which is not only disclosed, but which is claimed, but he loses sight of the fact that, after cancellation of the claim, the subject matter was disclosed and not claimed, and indeed it was not claimed until after the species patent issued. In this situation, it is clear that a patent cannot now be issued on such generic claims.

The plaintiff insists that the claims here involved are patentable over the three references cited, in addition to his own patent, constituting the prior art in that the claims here involved include elements not present in each of the references cited. It seems, however, that such patents do have elements which perform the functions of the elements in plaintiff's claims, and do preclude the issuance of patents on such claims.

For the reasons stated, the relief sought by the plaintiff cannot be granted. Counsel will prepare and submit appropriate findings and order to carry this decision into effect.

J. W. Morris
Judge

July 22, 1955

Filed August 22, 1955

JUDGMENT

This action came on to be heard, and thereupon upon consideration thereof, it is this 18th day of Aug., 1955 ADJUDGED that the complaint be and it is hereby dismissed on the merits, with costs against plaintiff.

J. W. Morris
Judge

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SIDNEY YOUNG, COURT REPORTER, 418 FEDERAL BLDG., SHREVEPORT, LA.

UNITED STATES COURT OF APPEALS

For the District of Columbia

No. 13,006

Alva G. Blanchard, Appellant

v.

Robert C. Watson, Commissioner of Patents, Appellee

Appeal from the United States District Court

for the District of Columbia

Decided May 31, 1956

Mr. Alva G. Blanchard, appellant, pro se.

Mr. Clarence W. Moore, Solicitor, United States Patent Office, for appellee.

Before Edgerton, Chief Judge, and Bastian and Burger, Circuit Judges.

PerCuriam: The judgment of the District Court is affirmed on the opinion of Judge Morris in the District Court. Blanchard v. Watson, 132 Fed. Supp. 744.

Affirmed.

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Filed May 23, 1955

STIPULATION

The above parties, having conferred in regard to the above identified action, agree and stipulate that the following facts may be accepted as established for purposes of review by the Honorable Court of the rejection on double patenting entered by the Patent Office examiner and affirmed by the Board of Appeals in plaintiff's application Serial No. 581,373, filed March 7, 1945.

Plaintiff filed on October 14, 1935, an application, Serial No. 44.988, upon which patent No. 2,233,395, was granted on March 4, 1941. This is plaintiff's parent application and its filing date is plaintiff's effective filing date.

During the pendency of application Serial No. 44,988, and on May 28, 1938, plaintiff filed an application, Serial No. 210,585 upon which patent No. 2,199,611 was granted on May 7, 1940. Application Serial No. 210,585 is a division of plaintiff's parent application Serial No. 44,988, and is entitled to the benefit of its filing date, October 14, 1935.

On February 20, 1941, and during the pendency of application Serial No. 44,988, plaintiff filed an application, Serial No. 379,822, upon which patent No. 2,395,212 was granted on February 19, 1946. Application Serial No. 379,822 is a continuation-in-part of application Serial No. 44.988. As to the subject matter of claims 1, 2 and 3 in suit, plaintiff is entitled to the benefit of the filing date of application Serial No. 44,988, to wit, October 14, 1935.

Plaintiff's application in suit. Serial No. 581,373. was filed on March 7, 1945, and during the pendency of application Serial No. 379,822. As to the subject matter of claims 1, 2 and 3 in suit, plaintiff is entitled to the benefit of the effective filing date of application Serial No. 379,822, which is October 14, 1935.

As filed on February 20. 1941, plaintiff's application Serial No. 379.822 contained claims 8, 9 and 10, which are, in substance, the same as claims 1, 2 and 3 in suit. but which are not identical therewith.

Claims 1, 2 and 3 are generic claims.

As granted on May 7, 1940, plaintiff's patent No. 2,199,611 included claims expressing one of the species defined in generic claims 1, 2 and 3.

As filed on October 14, 1935, plaintiff's application Serial No. 44,988 contained a claim numbered 15, reading as follows:

> "In a safety apparatus for boilers, the combination of a water supply conduit, a fuel supply conduit, a fluid pressure actuated valve for each of said conduits, and a master control unit comprising control valves for controlling the fluid pressure for actuating the valves in said conduits, a lever in said master unit for successively opening said master control valves, and means in said unit responsive to fluctuations in the water level in the boiler for rocking said lever. "

On April 6, 1940, plaintiff filed an amendment in his application Serial No. 44,988 reciting in part, as follows:

> "Cancel all claims except Claim 14 and Applicant reserves the right to amend the cancelled claims and make them the subject matter of divisional applications. "

On December 5, 1940, plaintiff, in requesting delay in issuance of Patent No. 2,233 395, upon his application Serial No. 44,988, stated, in part, as follows:

> "At this time we have another application pending, which is a partial division of this application, but we have not quite completed it for filing yet.
>
> We would, therefore, like to have the publication of this patent (application No. 44, 988) held ninety days, or the limit for getting this out."

With respect to said claim 15, the Patent Office Examiner had, on May 7, 1938, made the following statements in plaintiff's application Serial No. 44,988:

> "Claims 15 to 17 stand rejected on House in view of Fulton as urged in connection with claims 1 to 5. These are organization claims. Therefore, the examiner does not consider that specific features of appellant's valve construction are germane to the invention claimed. The examiner has held that any novelty in appellant's valve construction per se is subject matter for separate applications."

Alva G. Blanchard
Plantiff, pro se

E. L. Reynolds, Solicitor,
United States Patent Office,
Attorney for Defendant

SIDNEY YOUNG, COURT REPORTER, 418 FEDERAL BLDG., SHREVEPORT, LA.

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Filed May 23, 1955

ADDITIONAL STIPULATION

The above parties hereby further stipulate and agree that as filed on May 28, 1938, plaintiff's application Serial No. 210,585, upon which patent No. 2,199,611 was granted on May 7, 1940, contained an original claim numbered 1, reading as follows:

> "A housing having an opening, a plug in said opening, a plurality of outlet passages through said plug, a valve in each of said passages, a valve operating lever fulcrumed on said plug and extending into said housing, a float on the inner end of said lever, and connections between said lever and each of said valves whereby said valves are opened one at a time in sequence, responsive to the downward movement of said float."

In his initial action dated July 7, 1938, the Patent Office examiner rejected said claim as substantially met by each of the following patents:

Humphrey	796,516	Aug. 8, 1905
Wright	668,302	Feb. 19, 1901

On September 9, 1938, plaintiff amended said claim to the form in which it appears as claim 1 of said patent, stating:

> "It is now thought that Claim 1 has been sufficiently amended to show that it is not now broad enough to include Humphrey and Wright."

Alva G. Blanchard
Plaintiff, pro se

E. L. Reynolds, Solicitor,
United States Patent Office,
Attorney for Defendant.

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May 7, 1940. A. G. BLANCHARD 2,199,611

VALVE OPERATING STRUCTURE

Original Filed Oct. 14, 1935

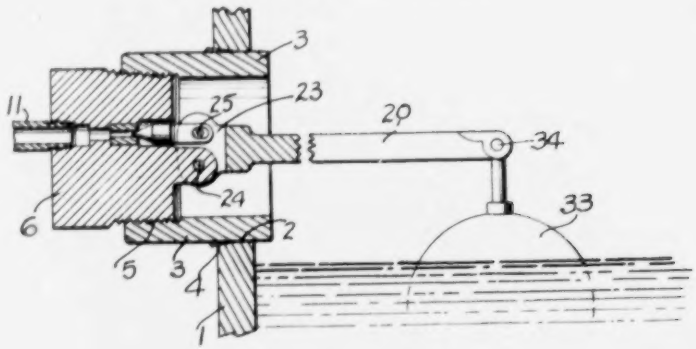

Fig. 1.

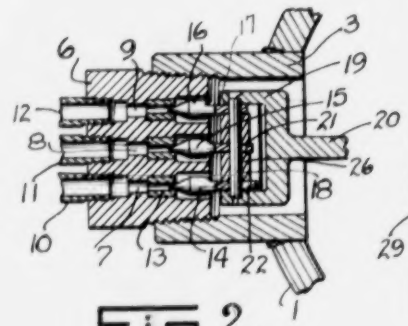

Fig. 2.

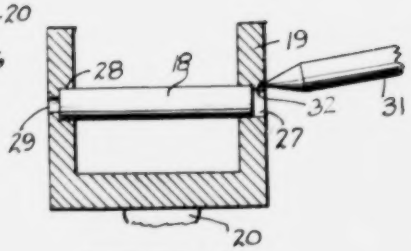

Fig. 3.

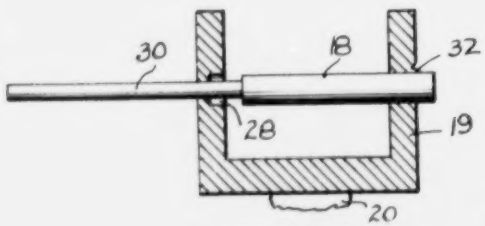

Fig. 4.

Inventor

Alva G. Blanchard

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UNITED STATES PATENT OFFICE

2,199,611

VALVE OPERATING STRUCTURE

Alva G. Blanchard, Shreveport, La.

Original application October 14, 1935, Serial No. 44,988. Divided and this application May 28, 1938, Serial No. 210,585

5 Claims. (Cl. 137—104)

The invention relates to the structure of a valve operating device.

While the device is capable of general application I have illustrated it particularly in connection with the operation of valves in outlets from steam boilers. It is sometimes desirable to provide a plurality of steam outlets from the boiler through which steam may be directed to operate regulators, fuel or water valves, and the like. Such a construction is usually operated in response to the level of the water in the boiler and my device is so illustrated.

It is an object of the present invention to provide means in connection with a single lever to operate a plurality of valves at different stages relative to the height of the water in the boiler.

It is desired that the valves be opened in a predetermined sequence so that the steam may be allowed to pass through one line first and then through other lines in a predetermined sequence.

The invention also involves a structure which is strong and compact and easily assembled in position.

The invention further involves the structure of the valve operating means through which the valve operating pin is held in position with a minimum amount of labor and expense.

The invention will be better understood in connection with the description of the drawing herewith in which

Fig. 1 is a vertical section through a valve assembly shown as connected with the float operated lever.

Fig. 2 is a horizontal section through the assembly disclosed in Fig. 1, the float being omitted.

Fig. 3 is a transverse detail of the yoke showing the manner in which the valve operating pin is secured in position.

Fig. 4 is a view similar to Fig. 3 showing the manner in which the pin may be removed when desired.

The present application is a division of my copending application Serial No. 44,988, filed October 14, 1935, for Safety appliance for boilers.

In carrying out my invention I contemplate forming in the wall 1 of the steam boiler an opening 2 formed to receive a collar 3 adapted to be welded in position in said opening, as shown at 4. The collar 3 is threaded at its outer end at 5 to receive a plug 6.

The plug 6 is formed to screw within the opening in the collar 3 and to provide outlets therethrough for the steam from the boiler. There may be two or more of these openings and in the present embodiment I have shown three outlet passages through the plug, said outlets 7, 8 and 9 having at their outer ends steam conducting pipes, 10, 11 and 12, respectively. It will be understood that said pipes may conduct the steam to any steam operated device.

At the inner ends of the passages 7, 8 and 9 are inserted valve seats 13. Each valve seat is adapted to cooperate with an adjacent valve, the valves 14, 15 and 16 cooperating with the outlets 7, 8 and 9, respectively. Each valve has a rearwardly extending valve stem 17 with an opening therein to receive a cross pin 18 mounted within a yoke 19 on the valve operating lever 20. In order that the valves may be operated in a predetermined sequence the openings through which the cross pin 18 passes are of different lengths in the different valve stems. I have shown the stem of the valve 16 as providing a close fit about the pin 18. In the stem of the valve 15, however, the opening is elongated, as shown at 21, and the opening in the stem of the valve 14 is elongated still more, as shown at 22. It will be obvious from this construction that when the lever is operated to move the valves the valve 16 will be moved first and at a predetermined interval thereafter the valve 15 will be opened and at a still later interval the valve 14 will open.

The lever 20, which is employed to operate the valves has at its end adjacent the valve a yoke 23. The lower end of the yoke engages with a pivot pin 24 which forms a fulcrum for the lever and allows the swinging of the lever in a vertical plane. At a point above the fulcrum 24 the cross pin 25 is mounted so as to engage through the openings in the valve stem as previously described. Between adjacent stems I provide spacers 26 which assist in maintaining the valves spaced equally along the pin 18.

With reference to Figs. 3 and 4, I have shown how the pin 18 may be secured in position in the yoke of the lever with a minimum consumption of time and labor. The yoke 19 is formed with an opening 27 at one side and on the opposite side there is a recess 28 which extends only part way through the wall of the yoke. At the end of the recess, however, there is a small opening 29 through which a punch 30 may be inserted to drive the pin from its mounting. In order to hold the pin in position with one end in the recess 28 I upset the metal about the opening 27 with a chisel or other instrument 31 so that it will prevent longitudinal movement of the pin from its seat. It will be obvious, however, that this upset

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position holding the pin in place by the punch 37 when it is desired to remove the pin.

The lever 29 is operated by a float 33 in the present embodiment, said float having a pivotal connection at 34 with the end of the lever.

In the operation of my device it will be obvious that the valves will be opened in response to predetermined levels of the water in the boiler. When the water is above a certain level all of the valves will be closed, but as the level is depressed first one will open and then the next, and finally the third. It will be seen, however, that if the level of the water is not lowered beyond a certain point all of the valves need not open, but each valve will open when the proper level of the float in the boiler is reached.

My invention is exceedingly simple. It will be obvious that the plug 6, upon which the valve structure is mounted, is one unitary device and that the removal of the plug will allow access to all of the valves in an obvious manner. The device is simple and strong in construction and will not easily get out of order or fail to function.

I claim:

1. A housing, a plurality of outlet passages through said housing, a valve in each of said passages, said valves having slots of varying lengths in one end to determine the order in which they are opened, a pin through said slots operated by a lever fulcrumed within said housing, a float on the end of said lever, whereby said valves are opened one at a time in sequence, responsive to the downward movement of said float.

2. A housing having an opening, a plug in said opening, a plurality of outlet passages through said plug, a valve in each of said passages, a valve operating lever fulcrumed on said plug and extending into said housing, a float on the inner end of said lever, a yoke on said lever, a cross pin on said lever, stems on said valves having openings therein to receive said cross pin, said valve stem openings being of varying length, whereby the downward movement of said lever will cause said pin to engage said valve stems to open said valves in sequence, one after the other.

3. A housing having an opening, a plug in said opening, a plurality of outlet passages through said plug, a valve in each of said passages, a valve operating lever fulcrumed on said plug and extending into said housing, a float on the inner end of said lever, a yoke on said lever, a cross pin in said yoke, stems on said valves having slotted openings therein to receive said cross pin, the openings in each stem being of a length different from that of the others, whereby said valves are timed to be opened by said lever arm in a predetermined order.

4. A plug adapted to close a fluid outlet and having a plurality of fluid passages therethrough, a valve in each of said passages, a float operated lever fulcrumed upon said plug, a yoke on said lever, a cross pin on said yoke, valve stems on said valves with slotted openings therein to be engaged by said pin, said openings being of different lengths for the purpose described.

5. A plug adapted to close a fluid outlet and having a plurality of fluid passages therethrough, a valve in each of said passages, a float operated lever fulcrumed upon said plug, a pin carried by said lever, stems on said valves having openings therein through which said pin extends, the opening in each stem being of different length from the others and means to secure said pin in said lever.

ALVA G. BLANCHARD.

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C-4

B. R. SINGLETON,

Assignor by mesne assignments to H. S. Hopkins & W. McCully.

LOW-WATER ALARM AND FIRE-EXTINGUISHER.

No. 7,767. Reissued June 26, 1877.

FIG. 1.

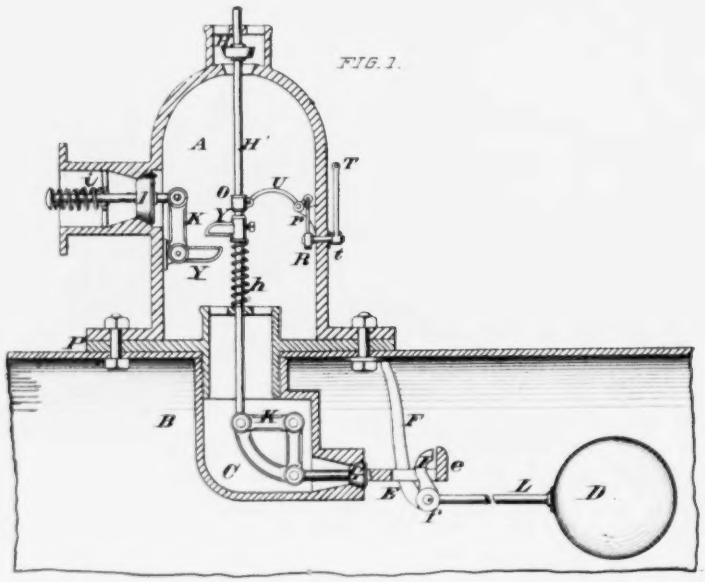


FIG. 3

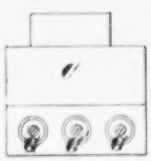


FIG. 2.

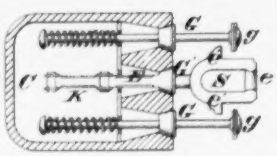
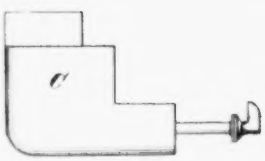


FIG. 4.



WITNESSES:

Paul Bakewell

Samuel S Boyd

INVENTOR

Benjamin R. Singleton

By Chas D. Moody

his atty:

UNITED STATES PATENT OFFICE.

BENJAMIN R. SINGLETON, OF HIGHLAND, ILLINOIS, ASSIGNOR, BY MESNE ASSIGNMENTS, TO HENRY S. HOPKINS AND WILLIAM McCULLY.

IMPROVEMENT IN LOW-WATER ALARM AND FIRE-EXTINGUISHER.

Specification forming part of Letters Patent No. 123,795, dated February 20, 1872; reissue No. 7,767, dated June 26, 1877; application filed March 3, 1877.

To all whom it may concern:

Be it known that I, BENJAMIN R. SINGLETON, formerly of St. Louis, Missouri, and now of Highland, Madison county, Illinois, have made new and useful Improvements in Steam-Boiler Low-Water Alarms and Fire-Extinguishers, of which the following is a full, clear, and exact description, reference being had to the annexed drawing, making part of this specification, in which—

Figure 1 is a vertical section, showing the invention in position; Fig. 2, a horizontal section taken through that part of the invention termed the "gage-box;" and Figs. 3 and 4, respectively, a front and a side elevation of the latter.

The same letters in the various figures denote the same parts.

My invention relates to an improvement in that class of steam-boiler low-water alarms wherein the movement of a float is the cause of the operation of the alarm. It further has reference to the means for extinguishing or checking the boiler-fire, substantially as herein set forth, and to the provision for readily testing the alarm and extinguisher, and for operating an auxiliary alarm.

Referring to the annexed drawing, A represents a dome of a suitable size and shape—say, eight inches in diameter and twelve inches in height—that is attached to the boiler B. C represents what I term the "gage" or "valve box." It is arranged within the boiler, in the steam-space thereof, and underneath or opposite the dome, and the boiler-shell is perforated or removed between the box and dome to establish communication between them, and to provide for the movement of the valve-stem, as hereinafter explained.

The mode of fixing the box C in position is as shown. A plate, P, that is interposed between the dome A and boiler-shell, is provided with a boss, *p*, that projects downward through the perforation in the boiler-shell between the dome and gage-box into the boiler, and is furnished with a thread to enable the gage-box to be screwed thereon.

The box C is of suitable form, and is inclosed from the boiler, saving that it is provided with the valves G′ G G, that can be opened to admit steam from the boiler into the box. The central valve G′ is attached to a rod, E.

D represents a float, that rises and falls with the water in the boiler. It is attached to a lever, L, that is pivoted at *f* to a bracket, F, so as to cause the downward movement of the float to bring the lever L against the rod E, drawing it outward from the gage-box and opening the valve G′.

The mode of bringing the lever L to bear upon the box E is by means of an arm, L′, with which the lever L is provided. The bar E is slotted to receive the arm L′, and its inner end is enlarged to form a projection, *e*, against which the upper end of the arm L′ strikes. The rod E, at its inner end, and which is within the gage-box, is pivoted to one arm of a bell-crank lever, K, that, in turn, is pivoted to the box C, and whose other arm is pivoted to a valve-stem, H′, that extends thence upward into and through the dome A, and at its upper end furnished with a valve, H, that serves to open and close an opening in the dome leading to an alarm-whistle. (Not shown.) The stem is also provided with an arm, Y, arranged to come (as hereinafter explained) against and move the arm Y′ of another bell-crank lever, K′, whose other arm is pivoted to the stem of a valve I, that, in turn, serves to open and close a pipe that leads (only the upper end of this pipe is shown) to the boiler-furnace chamber, and so that steam can be discharged therefrom onto the fire. The valve I is seated in the direction shown, and a spring, *i*, aids in keeping it closed, saving when the crank K′ is not moved.

There is another spring, *h*, arranged between the arm Y and the bearing *p* to aid in keeping the valve G′ shut, saving when the latter is brought into use, and as follows: As the float D falls with the water in the boiler, the lever L draws against the rod E. This opens the valve G′ and draws the rod H downward. The various parts are so adjusted as to open the valve G′ before the arm Y comes in contact with the arm Y′, and before the valve H is closed. Steam, being admitted into the box C and dome A, thence passes by the valve H to the alarm-whistle, operating the latter;

or, if desired, this steam may be conducted to a suitable pump to supply more water to the boiler. The sounding of the whistle is intended more especially as a primary warning; but if the water continues to fall the stem H′ is drawn farther down, bringing the arm Y against the crank K′ and opening the valve I. Steam then passes from the boiler through the box C, dome A, and pipe J, to the furnace-chamber of the boiler, checking and extinguishing the fire. The valves H and I are not, however, necessarily coactive, either being thoroughly operative, whether the other is in action or not. Therefore the valve H may be omitted from the construction without impairing the efficiency of the fire-extinguishing device, and in practice sufficient steam escapes through the dome to operate both the alarm and the extinguisher.

An additional feature of the improvement, and that can be used either as an auxiliary alarm, or as a means for testing the working condition of the invention generally, is shown in Fig. 1. O represents a sleeve attached to the stem H′, and connected to a rod, U, that, through a cam-rod, *r*, cam R, rock-shaft *t*, (that passes through the shell of the dome,) is connected with a lever, T, to which a rope, chain, or rod may be attached, and to bring the lever readily within reach. Now, as the stem H′ descends the sleeve O is brought down with it, causing the lever T to move and sound a bell, gong, or other alarm. By moving the lever, on the other hand, motion may be transmitted from without the dome to the stem H′, and to the valves G′ and I, testing the condition of the latter by the sounding of the whistle and the appearance of steam in the furnace-chamber.

Another feature of the improvement is shown in Figs. 2, 3, and 4, viz., the additional valves G G. They serve to open and close additional openings from the boiler into the gage-box, and are operated by means of the bosses *e′ e′* on the rod *e* coming against the heads *g g* on the stems of the valves. The arrangement is such as to open the various valves G′ and G G successively. Springs *g′* aid in closing the valves G G.

What I claim is—

1. The combination of the float D, bent lever L, slotted bar E, projections *e e′ e′*, and valves G G G′, substantially as and for the purpose described.

2. The combination of the float D, lever L, bar E, bell-cranks K K′, valve-stem H′, valves H and I, and springs *h* and *i*, substantially as and for the purpose specified.

3. The combination of the float D, lever L, bar E, crank K, stem H′, sleeve O, levers or bars U *r*, cam R, shaft *t*, and lever T, substantially as and for the purpose described.

4. The combination of the lever T, shaft *t*, cam R, rod *r*, rod U, sleeve O, stem H′, arm Y, crank K, and valve I, substantially as described.

5. The combination of the float D, lever L, rod E, projection *e*, gage-box C, and valve G′, substantially as described.

6. The combination of the lever T, shaft *t*, cam R, rods *r* U, sleeve O, stem H′, and dome A, substantially as described.

7. The combination of the box C, plate P, bearing *p*, arm Y, valve G′, lever K, stem H′, and spring *h*, substantially as described.

8. The combination of the levers K K′, stem H′, arm Y, rod E, lever L, float D, and valve I, substantially as described.

BENJAMIN R. SINGLETON.

Witnesses:

JACOB E. SCHMITT,
F. M. KYLE.

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W. D. McLAUCHLIN.

LOW WATER ALARM AND BOILER FEEDER.

No. 458,794. Patented Sept. 1, 1891.

Fig. 2.

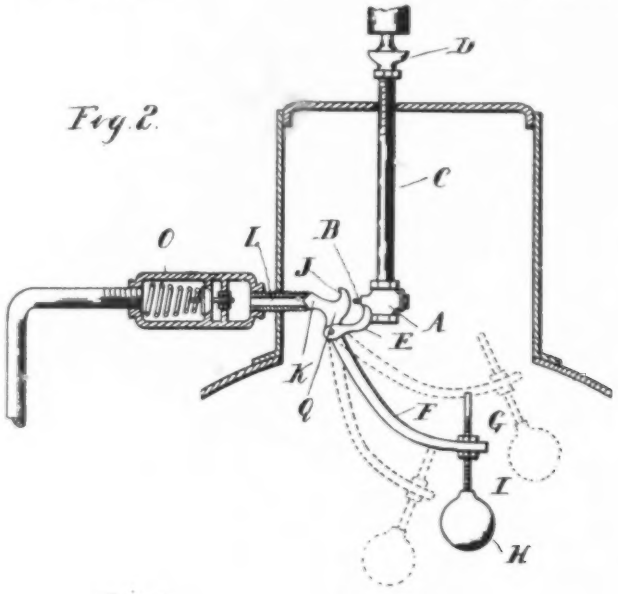
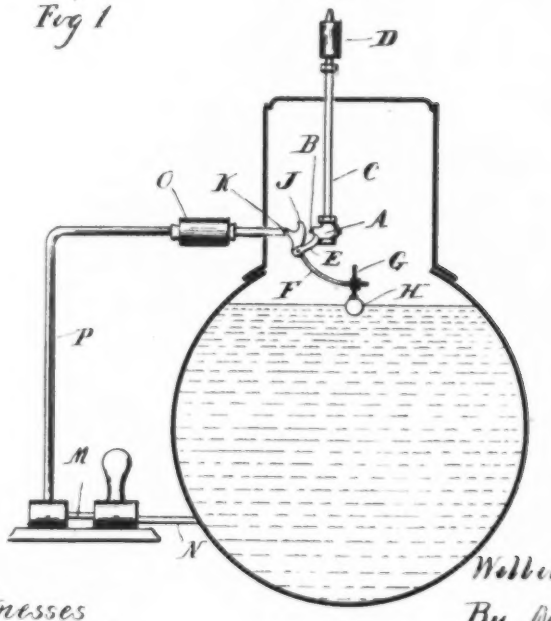


Fig 1



Witnesses
a. L. Nadler
P. M. Hulbert

Inventor
William D McLauchlin
By Thos. H. Sprague & Son
Atty

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WILLIAM D. McLAUCHLIN, OF CORUNNA, MICHIGAN, ASSIGNOR OF ONE-HALF TO AUSTIN PHILLIPS, OF SAME PLACE.

LOW-WATER ALARM AND BOILER-FEEDER.

SPECIFICATION forming part of Letters Patent No. 458,794, dated September 1, 1891.

Application filed April 1, 1891. Serial No. 387,310. (No model.)

To all whom it may concern:

Be it known that I, WILLIAM D. McLAUCHLIN, a citizen of the United States, residing at Corunna, in the county of Shiawassee and State of Michigan, have invented certain new and useful Improvements in Low-Water Alarms and Boiler-Feed Devices, of which the following is a specification, reference being had therein to the accompanying drawings.

This invention relates to new and useful improvements in boiler-feed and low-water alarm for steam-generators; and the invention consists in the peculiar construction of a float designed to open the whistle-valve on the lowering of the water beyond a predetermined point and to close the steam-supply pipe to the pump when the water has risen to the level desired to be maintained.

The invention further consists in the application to the steam-supply pipe of a spring-actuated valve set at such a tension that no steam will pass through unless it is of a sufficient pressure to operate the feed-pump.

The invention further consists in the arrangement, combination, and construction of the various parts, all as more fully hereinafter described.

In the drawings, Figure 1 is a vertical section through a boiler, showing my invention applied thereto. Fig. 2 is a similar elevation, partly in section, showing the parts in their various positions.

A is a spring-actuated valve located in the steam-dome or in any other part of the steam-space of the boiler and adapted to be opened by pressure upon the pin B. This valve is supported by the pipe C, passing through the shell of the boiler, at the upper end of which is secured the whistle D. Upon this valve is secured a bracket or arm E, to which is pivoted the float-valve lever F. This lever at its lower end is apertured to receive the stem G, secured to the upper end of the float H. This stem is screw-threaded, and the float can be transferred to any desired height by means of the lock-nuts I on opposite sides of the lever. This lever is provided with a valve-actuated arm J, so arranged that as the float lowers it will strike the pin B upon the valve and the whistle will be blown, sounding an alarm to indicate that the water has lowered to a dangerous point. The alarm will continue sounding until the float again rises.

Upon the opposite side of the arm J is formed a valve K, adapted to open and close the steam-supply pipe L to the boiler-feed M, which is connected to the boiler by means of the pipe N. In this steam-supply pipe I arrange a spring-actuated valve O of any suitable construction, setting the spring of the valve so that it will not open until sufficient pressure has accumulated in the boiler to operate the pump M. The object of this valve is that as the pump is ordinarily set below the point at which the steam finds exit from the boiler the vertical portion P thereof would fill with water if steam were allowed to enter therein at a pressure less than sufficient to operate the pump.

It will be seen that the head Q of the lever having the arm J at one side and the valve K at the other is interposed between the pin B and the steam-supply pipe L.

In the ordinary operation of the device the steam will be admitted to the feed-pump more or less in proportion as the float-valve H rises or lowers, and when the water reaches the proper height that pipe will be entirely closed. In case the water becomes too low at any time the pipe L will be opened wide, and at the same time the weight of the float-valve and lever will operate the valve A and blow the whistle. By connecting the float directly to the valve A, I obviate the necessity of putting a bracket inside of the boiler.

What I claim as my invention is—

1. In a steam-boiler, the combination, with the boiler, of a steam-pipe leading out from the same, a feed-pump into which the pipe leads, a float-actuated lever for closing the steam-pipe, and a spring-actuated valve in the steam-pipe actuated by steam-pressure independent of the lever, substantially as described.

2. In a steam-boiler, the combination, with the boiler, of an alarm, a valve for the alarm, a steam-supply pipe leading from the boiler at a point opposite the valve, a float-actuated lever between the valve and pipe-opening for

opening and closing the same, a feed-pump into which the steam-pipe enters, and a spring-actuated valve in the steam-supply pipe actuated by steam-pressure independent of the lever, substantially as described.

3. In a steam-boiler, the combination of an alarm, a steam-pipe leading out from the boiler, a valve for the alarm, and a float-actuated lever interposed between the valve and steam-pipe, one side arranged to open the steam-valve and its opposite side formed into a valve for closing the steam-supply pipe, substantially as described.

In testimony whereof I affix my signature in presence of two witnesses.

WILLIAM D. McLAUCHLIN.

Witnesses:
S. M. HULBERT,
A. L. HOBBIE.

No. 683,021. Patented Sept. 24, 1901.

O. E. & E. E. CLARK.

BOILER FEED REGULATOR.

(Application filed Dec. 2, 1899.)

(No Model.) 2 Sheets—Sheet 1.

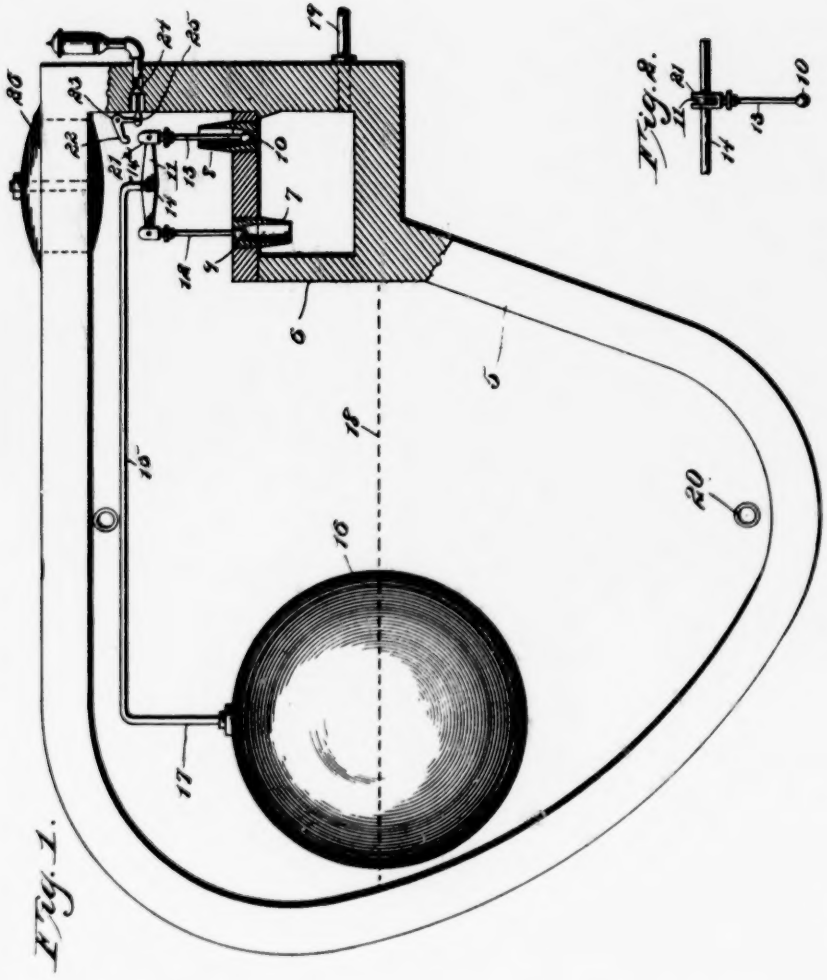

Fig. 1.

Fig. 2.

WITNESSES

Louis D. Heinrichs

B. F. Funk

INVENTORS

Omar E. Clark

Ellsworth E. Clark

By Victor J. Evans Attorney

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No. 683,021. Patented Sept. 24, 1901.

O. E. & E. E. CLARK.

BOILER FEED REGULATOR.

(Application filed Dec. 2, 1899.

(No Model.)

2 Sheets—Sheet 2.

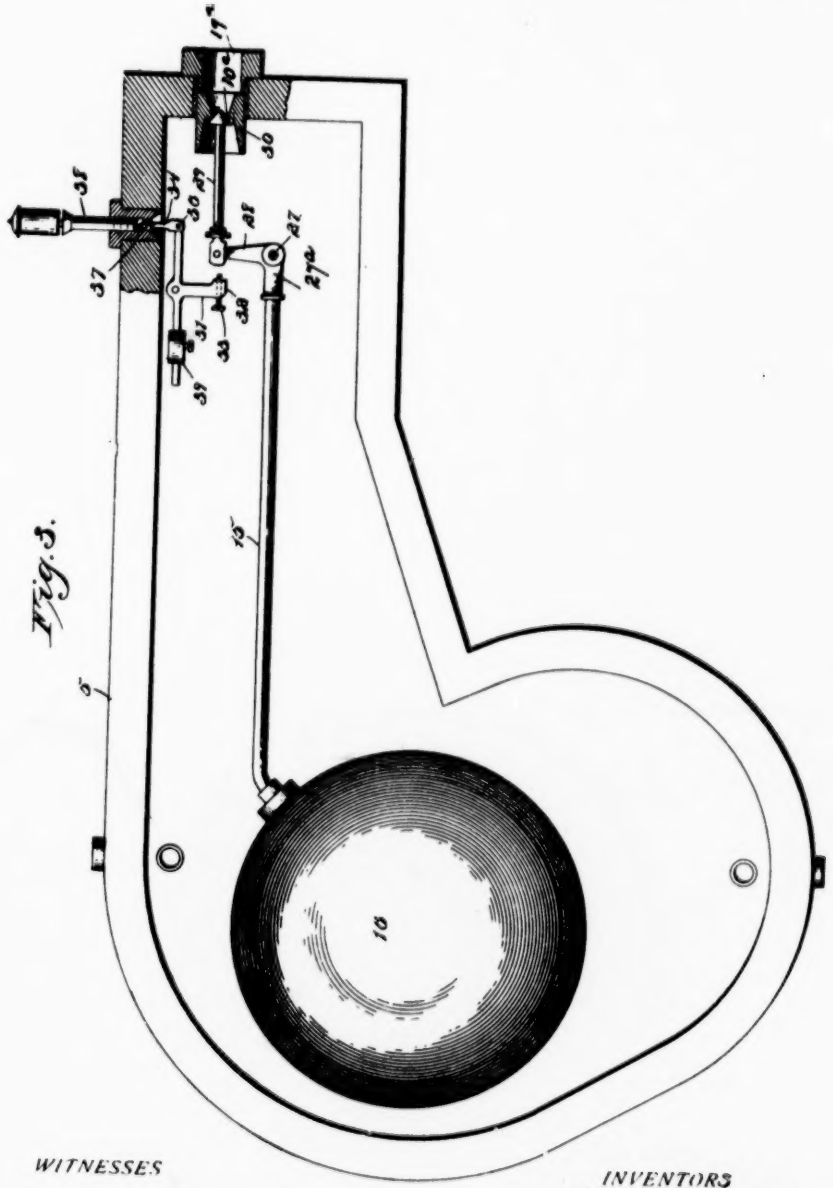

Fig. 3.

WITNESSES

Louis D. Heinrichs

B. F. Funk

INVENTORS

Omar E. Clark and

Ellsworth E. Clark

By Victor J. Evans.

Attorney

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UNITED STATES PATENT OFFICE.

OMAR E. CLARK AND ELLSWORTH E. CLARK, OF VICKSBURG, MICHIGAN.

BOILER FEED-REGULATOR.

SPECIFICATION forming part of Letters Patent No. 683,021, dated September 24, 1901.

Application filed December 2, 1899. Serial No. 739,019. (No model.)

To all whom it may concern:

Be it known that we, OMAR E. CLARK and ELLSWORTH E. CLARK, citizens of the United States, residing at Vicksburg, in the county of Kalamazoo and State of Michigan, have invented certain new and useful Improvements in Boiler Feed-Regulators, of which the following is a specification.

This invention relates to steam-boilers, but more particularly to a low-water alarm and a feed device therefor; and it consists in certain novel features of construction, combination, and arrangement of parts in an apparatus of this character, which will be hereinafter more fully described, illustrated in the accompanying drawings, and set forth in the appended claims.

The objects of the invention are to provide a simple and effective means comprising a float-operated valve mechanism for letting on and cutting off the supply of steam to the injector-pump to maintain the water in the boiler at a predetermined level and to operate or control the whistle-valve when the water reaches a level below a predetermined point or the pump fails to work.

In the drawings, Figure 1 is a vertical transverse sectional view through a casing of approved construction, showing my invention applied thereto. Fig. 2 is a side elevation of the mandrel and valves; and Fig. 3 is a transverse section through a modified form of casing, showing a modified form of mechanism.

Referring now to the drawings by reference-numerals, 5 indicates a casing arranged on a steam-boiler, and in which is arranged a steam-chest 6, provided at its top with oppositely-disposed tapering valve-seats 7 and 8, in which are seated valves 9 and 10, respectively, pivotally connected to the superimposed lever 11 by means of the pendent valve-stems 12 and 13, which engage the respective ends thereof. Said lever is rigidly secured to the mandrel or shaft 14, journaled in suitable bearings and arranged in said casing. Projecting from said shaft 14 is a crank-arm 14^a, with which is connected a transversely-extending arm or rod 15, on the free end of which is a float 16, suspended from the depending portion 17 thereof and adapted to normally retain the valves heretofore referred to seated in their seats—that is, when the water assumes a level indicated by the dotted lines 18, said lines indicating the level of the water under normal conditions. Should the water recede below that level, owing to its being generated into steam or from other causes, the float will drop down to said level and gradually withdraw the valves from their seats, allowing steam to enter the steam-chest from the dome of the boiler, and said steam will pass out through the outlet-pipe 19 to a suitable injector or steam-pump, (not shown,) which will be started thereby and supply the boiler with water through the inlet-pipe 20. As soon as the water reaches the desired level the float, being carried up with it, will close the valves 7 and 8 and the pump will be secured against working until the water recedes again. Should the water become too low or the pump fail to work, the projecting end 21 of the valve-stem 13 will contact with the depending finger 22 of the bell-crank lever 23, which will withdraw the valve 24, pivoted thereto at 25, from its seat and admit steam to the whistle, thus indicating the danger of an explosion. At the top of the casing, immediately over the mechanism above described, we have provided a manhole 26, whereby access may be gained to the interior of the casing and the parts cleaned or repaired.

In the modification, 5 indicates the casing or shell, provided with a steam-outlet 10^a, in which is a valve-seat 19^a. A shaft 27 is arranged in said casing, and projecting therefrom is a crank-arm 27^a, carrying an arm or rod 15, on the free end of which is secured the float 16, adapted to rise and fall with the level of the water. An upwardly-projecting arm 28 extends from the shaft 27, and pivoted thereto is a valve-stem 29, carrying at its free end the valve 30, adapted to be seated in the seat 26 by the action of the float. The alarm mechanism consists of a pivoted lever 31, having the depending finger 32 intermediate its ends and provided with a regulating-screw 33, designed to contact with the valve-stem 29 when the water is at a low level. The valve-stem 34 is pivoted at 36 to the lever 31 and carries a valve 37, designed to normally hold the whistle-tube 38 closed, which action is facilitated by the adjustable weights 39, slidably secured on the free end of said lever 31.

It will thus be seen that we have provided a neat and simple construction of feeder and alarm, and we would have it understood that the minor details of construction may be resorted to within the scope of the invention without departing from the spirit or sacrificing any of the advantages thereof.

Having thus described this invention, what we claim, and desire to secure by Letters Patent, is—

1. A boiler feed-regulator comprising a casing, a steam-outlet pipe connected to the casing, an inwardly-projecting valve-seat, a steam-valve having a valve-stem and seating against the valve-seat, a horizontal shaft, a horizontally-arranged float-rod provided with a float, a crank-arm on the shaft connected with the valve-stem, a crank-arm on the shaft connected with the float-rod, an indicator secured to the casing, a valve having a valve-stem and controlling the indicator, and a bell-crank lever having one arm connected with the valve-stem of the indicator-valve and the other arm adapted to be engaged by the projecting end of the stem of the steam-valve.

2. A boiler feed-regulator comprising a casing having a steam-chest provided at top with oppositely-disposed valve-seats, a steam-outlet pipe connected to the valve-chest, steam-valves having valve-stems and seating against the valve-seats, a horizontal shaft, a lever mounted on the shaft and carrying the valves, a horizontally-arranged float-rod provided with a float, a crank-arm on the shaft connected with the float-rod, an indicator secured to the casing, a valve having a valve-stem and controlling the indicator and a bell-crank lever having one arm connected with the valve-stem of the indicator-valve and the other arm adapted to be engaged by the projecting end of one of the stems of the steam-valves.

In testimony whereof we affix our signatures in presence of two witnesses.

OMAR E. CLARK.
ELLSWORTH E. CLARK.

Witnesses:
JESSE R. CROPSEY,
ROSS A. EMENGER.

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35 United States Code, §145.

Civil action to obtain patent

An applicant dissatisfied with the decision of the Board of Appeals may unless appeal has been taken to the United States Court of Customs and Patent Appeals, have remedy by civil action against the Commissioner in the United States District Court for the District of Columbia if commenced within such time after such decision, not less than sixty days, as the Commissioner appoints. The court may adjudge that such applicant is entitled to receive a patent for his invention, as specified in any of his claims involved in the decision of the Board of Appeals, as the facts in the case may appear and such adjudication shall authorize the Commissioner to issue such patent on compliance with the requirements of law. All the expenses of the proceedings shall be paid by the applicant. July 19, 1952, c. 950, § 1, 66 Stat. 803.

35 United States Code § 121.

Divisional applications

If two or more independent and distinct inventions are claimed in one application, the Commissioner may require the application to be restricted to one of the inventions. If the other invention is made the subject of a divisional application which complies with the requirements of Section 120 of this title it shall be entitled to the benefit of the filing date of the original application. A patent issuing on an application with respect to which a requirement for restriction under this section has been made, or on an application filed as a result of such a requirement, shall

not be used as reference either in the Patent Office or in the courts against a divisional application or against the original application or any patent issued on either of them, if the divisional application is filed before the issuance of the patent on the other application. If a divisional application is directed solely to subject matter described and claimed in the original application as filed, the Commissioner may dispense with signing and execution by the inventor. The validity of a patent shall not be questioned for failure of the Commissioner to require the application to be restricted to one invention. July 19, 1952. c. 950. §1 66 Stat. 800.

35 United States Code §101.

Inventions patentable

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title. July 19, 1952, c. 950, §1, 66 Stat. 797.

28 United States Code § 1254

Courts of appeals; certiorari; appeal; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By appeal by a party relying on a state statute held by a court of appeals to be invalid as repugnant to the constitution,

SIDNEY YOUNG, COURT REPORTER, 418 FEDERAL BLDG., SHREVEPORT, LA.

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treaties or laws of the United States but such appeal shall preclude review by writ of certiorari at the instance of such appellant, and the review on appeal shall be restricted to the Federal questions presented;

(3) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy

June 25, 1948, c. 646, 62 Stat. 928.

28 United States Code §1291.

Final decisions of district courts.

The courts of appeals shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the District Court for the Territory of Alaska, theUnited States District Court for the District of the Canal Zone, and the District Court of the Virgin Islands. except where a direct review may be had in the Supreme Court.

June 25, 1948. c. 646, 62 Stat. 929.

Manual of Patent Examining Procedure § 706.03 (k).

Duplicate claims; double patenting

Inasmuch as a patent is supposed to be limited to only one invention or. at most, several closely related indivisible inventions, limiting an application to a single claim, or a single claim to each of the related inventions might appear to be logical as well as convenient. However. court decisions have confirmed applicant's right to restate (i.e. by plural

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claiming) his invention in a reasonable number of ways. Indeed, a mere difference in scope between claims has been held to be enough.

Nevertheless, when two claims in an application are duplicates, or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to reject the other as being a substantial duplicate of the allowed claim. Also, it is possible to reject one claim on an allowed claim if they differ only by subject matter old in the art. The latter ground of rejection is set forth in the following paragraph quoted from Ex parte Whitelaw, 1915 C. D. 18; 219 O. G. 1237:

> "Claim 54 is not patentable over claim 51 and claims 53, 55 and 56 are not patentable over claim 50 in view of Comstock, No. 590,657, which shows that it is old to employ an engine-casing in tools of this character. The claims held patentable are considered as fully covering applicants invention, and applicant cannot be permitted to multiply his claims by presenting alleged combinations which distinguish from the real invention only by including elements which are old in the art and perform no new function."

This rejection, (the ex parte Whitelaw doctrine) is usually not applied if there are only a few claims in the application.

Situations related to that given above are as follows:

Conflicting subject matter in two applications of the same inventor, one of which is assigned, see Section 304.

Where there is a common assignee for two or more applications by different inventors, see Section 305.

Where the same inventor has two or more applications for species

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or for related inventions, see Chapter 800, particularly Sections 804-804.02, 822, and 822.01 for double patenting rejections of inventions not patentable over each other.

Rules of Practice in the United States Patent Office, Rule 44

44 A reservation for a future application of subject matter disclosed but not claimed in a pending application will not be permitted in the pending application.

Rules of Practice in the United States Patent Office, Rule 51

51. General requisites of an application. Applications for patents must be made to the Commissioner of Patents. A complete application comprises:

(a) A petition or request for a patent, see rule 61.

(b) A specification including a claim or claims, see rules 71 to 77.

(c) An oath, see rule 65.

(d) Drawings, when necessary, see rules 81 to 88.

(e) The prescribed filing fee. (See rule 21 for filing fees.)

Rules of Practice in the United States Patent Office, Rule 79.

79. Reservation clauses not permitted. A reservation for a future application of subject matter disclosed but not claimed in a pending application will not be permitted in the pending application, but an application disclosing unclaimed subject matter may contain a reference to a later filed application of the same applicant or owned by a common assignee disclosing and claiming that subject matter.

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Rules of Practice in the United States Patent Office, Rule 106.

106. Rejection of claims. If the invention is not considered patentable, or not considered patentable as claimed, the claims, or those considered unpatentable will be rejected. In rejecting claims for want of novelty or for want of inventions, the examiner must cite the best references at his command. When a reference is complex or shows or describes inventions other than that claimed by the applicant, the particular part relied on must be designated as nearly as practicable. The pertinence of each reference, if not obvious, must be clearly explained and each rejected claim specified.

Claim 15

Serial No. 44,988 - Filed October 14, 1935, issued March 4, 1941, as Patent No. 2,233,395.

In a safety apparatus for boilers, the combination of a water supply conduit, a fuel supply conduit, a fluid pressure actuated valve for each of said conduits, and a master control unit comprising control valves for controlling the fluid pressure for actuating the valves in said conduits, a lever in said master unit for successively opening said master control valves, and means in said unit responsive to fluctuations in the water level in the boiler for rocking said lever. (Emphasis ours.)

Claims 8, 9 and 10

Serial No. 379,822 - Filed February 20, 1941 - Issued February 19, 1946 as Patent No. 2,395,212

8. A float chamber, a plurality of fluid passages through the wall thereof, valves in said passages, a float thereon, means on the pivoted

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end of said float arm whereby said fluid passages may be opened or closed in any predetermined order by the raise and fall of said float.

9. A float chamber, a plurality of steam conducting passages leading from said float chamber, a float lever, a pivotal support adjacent to said plurality of steam conducting passages, a float on said float lever, means on pivotal end of said float lever whereby valves in said plurality of steam conducting passages are lifted from their seats in any predetermined sequence desired by the raise and fall of said float.

10. A float chamber, a plurality of outlets from said float chamber, a float lever pivoted adjacent to said plurality of outlets, a float on said lever, means on pivoted end of said lever controlling said plurality of outlets, whereby said outlets may be opened or closed in any predetermined order by the raise and fall of said float.

Claims 1, 2 and 3

Serial No. 581,373 - Filed March 7, 1945 - Presently Pending.

1. A float chamber, a plurality of fluid passages through the wall thereof, valves in said passages, a float arm pivoted adjacent to said passages, a float thereon, and means on the pivoted end of said float arm whereby said fluid passages may be opened in a predetermined order by the fall of said float.

2. A float chamber, a plurality of steam conducting passages leading from said float chamber, a float lever, a pivotal support adjacent to said plurality of steam conducting passages, a float on said float lever, means on pivotal end of said float lever whereby valves in said plurality of steam conducting passages are lifted from their seats in a predeter-

mined sequence by the fall of said float.

3. A float chamber, a plurality of outlets from said float chamber, a float lever pivoted adjacent to said plurality of outlets, a float on said lever, means on pivoted end of said lever controlling said plurality of outlets, whereby said outlets may be opened in a predetermined order by the fall of said float.

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In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 523

ALVA G. BLANCHARD, PETITIONER

v.

ROBERT C. WATSON, COMMISSIONER OF PATENTS

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the Patent Office examiner appears at pp. 1-3 of Appendix A of the Petition, and the opinion of the Board of Appeals at pp. 3-6 of Appendix A. The opinion of the District Court (Pet. App. A, pp. 7-9) is reported at 132 F. Supp. 744, and the opinion of the Court of Appeals (Pet. App. A, p. 10) is reported at 233 F. 2d 699.

JURISDICTION

The decision of the Court of Appeals was entered on May 31, 1956 (Pet. App. A, p. 10). By order of Mr. Justice Black, entered August 10, 1956, petitioner's

time for filing a petition for a writ of certiorari was extended to October 27, 1956. The petition for a writ of certiorari was filed on October 23, 1956. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the courts below erred in refusing to order the issuance of a patent to petitioner on the ground of double patenting.

2. Whether the courts below erred in refusing a patent to petitioner on the ground that the claims in suit were met by the prior art.

STATUTES AND REGULATIONS

The pertinent statutes and regulations are set forth in Appendix D to the Petition.

STATEMENT

Petitioner brought this action in the District Court under 35 U.S.C. (1952 ed.) 145 (based upon former R. S. 4915) to obtain an order requiring the issuance to him of a patent containing claims 1, 2 and 3 of his application for patent No. 581,373, filed March 7, 1945. His claim was denied by the District Court on the basis of double patenting and of unpatentability in view of cited prior art (Pet. App. A, pp. 7-9), and this denial was affirmed by the Court of Appeals on the opinion of the District Court (Pet. App. A, p. 10). The pertinent facts as stipulated by the parties and found by both courts are somewhat technical and complicated, involving four related applications by petitioner and three related patents; but they may be summarized as follows:

On October 14, 1935, petitioner filed an application for a patent on a valve operating structure, No. 44,988,

upon which patent No. 2,233,395 was granted on March 4, 1941 (Pet. App. B, p. 1). Pending final action on that application, however, petitioner, on April 6, 1940, canceled all claims therein except claim 14, stating that "Applicant reserves the right to amend the cancelled claims and make them the subject matter of divisional applications" (Pet. App. B, p. 2). Accordingly, patent No. 2,233,395 was granted only with respect to claim 14 of application No. 44,988.

On May 28, 1938, petitioner filed another application, No. 210,585, upon which patent No. 2,199,611 was granted on May 7, 1940 (Pet. App. B, p. 1). The parties have stipulated (Pet. App. B, p. 2) that "As granted on May 7, 1940, plaintiff's patent No. 2,199,611 included claims expressing one of the species defined in generic claims 1, 2, and 3" of application No. 581,373, filed March 7, 1945, the claims involved in the instant proceeding.

On February 20, 1941, petitioner filed still another application, No. 379,822, which issued as patent No. 2,395,212 on February 19, 1946 (Pet. App. B, p. 1). On March 7, 1945, while this application No. 379,822 was still pending, petitioner filed the fourth application, No. 581,373, the application here involved (Pet. App. B, p. 2). Claims 8, 9 and 10 of the third application, No. 379,822, which were not included in patent No. 2,395,212, are in substance the same as claims 1, 2 and 3 of the fourth application, No. 581,373, the claims involved in the present suit (Pet. App. B, p. 2), and petitioner is entitled to the benefit of the effective filing date of application No. 379,822 with respect to claims 1, 2 and 3 (Pet. App. B, p. 2).

The Patent Office examiner denied petitioner a patent on claims 1, 2 and 3 of application No. 581,373 (the

present application) on the ground of double patenting, holding that under well settled principles the earlier specific claims in patent No. 2,199,611 barred the issuance of patents on later generic claims to the same subject matter—which, as stated above, has been stipulated to be the case here—unless the generic claims were pending at the time that the species claims issued (Pet. App. A, pp. 1-2). Petitioner contended that he had protected his right to a patent upon generic claims 1, 2 and 3 of application No. 581,373, by reason of a generic claim (claim 15) contained in his original application No. 44,988, filed in 1935, and which was said to be still pending (Pet. App. A, p. 1). The examiner rejected this contention on the ground that claim 15 was not to the same subject matter as claims 1, 2 and 3 of the present application (No. 581,373) (Pet. App. A, p. 1). The examiner also held that, regardless of subject matter, claim 15 was canceled on April 6, 1940, or prior to the date of May 7, 1940, upon which the specific claims in patent No. 2,199,611 issued (Pet. App. A, p. 2). Since application No. 379,822 (which contained claims 8, 9 and 10, corresponding to present generic claims 1, 2 and 3) was not filed until February 20, 1941, the examiner concluded that no generic claim was pending at the time of the issuance of the specific claims in patent No. 2,199,611 on May 7, 1940, and therefore that petitioner's present application (No. 581,373) was necessarily barred by the rule against double patenting (Pet. App. A, p. 2).

The Patent Office Board of Appeals affirmed the decision of the examiner, and petitioner brought suit in the District Court to compel issuance of the patent (Pet. App. A, pp. 3-5). The District Court, in an opin-

ion based upon extensive findings of fact and conclusions of law (J. A. 20-23), agreed with the Patent Office tribunals that the claims were barred under the rule against double patenting (Pet. App. A, pp. 7-9). The court found further (Pet. App. A, p. 9) that the claims were also barred as met by the prior art, basing this conclusion upon evidence of three patents: patent No. 683,021, issued in 1901; patent No. 458,794, issued in 1891; and patent No. 7,767, issued in 1877 (Pet. App. A, p. 7). The court held that it had authority to consider these references even though they were not cited in the Patent Office proceedings, and found that these patents "have elements which perform the functions of the elements in plaintiff's claims, and do preclude the issuance of patents on such claims". Upon petitioner's appeal, the Court of Appeals affirmed on the opinion of the District Court (Pet. App. A, p. 10).

ARGUMENT

The courts below, in refusing on two independent and equally valid grounds to require the issuance of a patent to petitioner, applied well settled rules of patent law to the particular facts of this particular case. These decisions are clearly correct and raise no issues of law, general or specific, warranting review by this Court.[1]

1. The rulings below properly held petitioner's claims invalid on the ground of double patenting. It is firmly established that no patent on an application with

[1] The Court has said that, absent a conflict between circuits, it will not grant a writ of certiorari in an "ordinary patent case" that does not involve "an important issue of general patent law * * *." *Keller* v. *Adams-Cambell Co.*, 264 U.S. 314, 319; *Lamb & Bowler Corp.* v. *Western Well Works*, 263 U.S. 387, 393; see *General Talking Pictures Corp.* v. *Western Electric Co.*, 304 U.S. 175, 178-179.

generic claims may issue subsequent to the grant of a patent on claims to one of the species included therein, unless the application with the generic claims was made prior to the issuance of the species patent. *Gold* v. *Gold*, 187 Fed. 273 (C.A. 2); *Kaplan* v. *Robertson*, 50 F. 2d 617 (D. Md.); *Union Typewriter Co.* v. *Smith*, 173 Fed. 288 (W. D. Pa.); 2 Walker, *Patents* (Deller's Ed. 1937) 1283. Since patent No. 2,199,611—which was issued on May 7, 1940, and concededly contained a species claim of the genus represented by present generic claims 1, 2 and 3—preceded the filing of application No. 379,822, from which the present claims are derived (see the Statement, *supra*, p. 3), the Patent Office tribunals and the District of Columbia courts correctly held petitioner's claims to be unpatentable. He attempts to avoid the thrust of the rule against double patenting by arguing that a generic claim corresponding to present claims 1, 2 and 3—claim 15 of application No. 44,988, filed October 14, 1935—was in fact pending at the time that specific patent No. 2,199,611 issued on May 7, 1940. The courts below, however, rejected this contention for two reasons, either one a sufficient basis for denying the claims, and each demonstrably correct.

a. In the first place, the courts found (J. A. 21) that claim 15 of original application No. 44,988 "is not the same in substance as generic claims 1, 2, and 3, in suit." This factual finding, reaffirming the conclusion of the Patent Office examiner and the Board of Appeals, is in itself dispositive of petitioner's claim. The record amply supports this holding (see, *e.g.*, Pet. App. A. pp. 1, 5; respondent's brief in the Court of Appeals, p. 9); and the two-court rule, coupled with the almost binding force of concurrent administrative and judicial

findings on technical patent matters,[2] effectively forecloses further review. See *Comstock* v. *Group of Investors,* 335 U.S. 211, 214, and cases there cited.

b. Moreover, whatever the content of claim 15, the courts properly concluded that this claim was canceled on April 6, 1940, shortly prior to the issuance of the specific claims in patent No. 2,199,611, dated May 7, 1940. The original application for the present generic claims 1, 2 and 3 (in substance, claims 8, 9 and 10 of No. 379,822) was not filed until February 20, 1941, and accordingly at the time the specific patent issued in May 1940, there was no generic claim pending. Petitioner argues that there was no such hiatus in the pendency of the generic claims because in canceling claim 15 he had reserved the right to amend the canceled claim and make it the subject matter of a divisional application. But Rule 44 of the Rules of Practice in the United States Patent Office (Pet. App. D, p. 5) expressly provided that "A reservation for a future application of subject matter disclosed but not claimed in a pending application will not be permitted in the pending application." The courts below properly held that upon the cancellation of claim 15 its subject matter was disclosed but no longer claimed, and accordingly that it could not validly be reserved. Rule 44 is a long-

[2] The Court of Appeals has consistently emphasized the great weight which must be given to concurrent factual findings of the District Court and of the Patent Office on scientific problems, refusing to disturb such findings unless clearly wrong, and resolving all doubt in favor of the correctness of the administrative and judicial action. See, *e.g., Gilbert* v. *Marzall,* 182 F. 2d 389 (C.A. D.C.); *Hydraulic Press Corporation* v. *Coe,* 134 F. 2d 49 (C.A. D.C.); *Reed* v. *Coe,* 132 F. 2d 599 (C.A. D.C.); *Morrison* v. *Coe,* 127 F. 2d 737 (C.A. D.C.).

established part of Patent Office procedure, having come into effect in 1888 (*Ex parte Mullen and Mullen*, 1890 C.D. 9, 11), and was properly applied here. Moreover, the construction and application of such a special patent rule by the Patent Office and the District of Columbia courts plainly does not call for review by this Court.

2. The decisions below were equally sound in holding claims 1, 2 and 3 unpatentable because met by the prior art. Although the patents evidencing the prior are were not cited in the Patent Office proceedings, they were nevertheless "properly received in evidence and properly considered" by the District Court. *American Steel & Wire Co. of New Jersey* v. *Coe*, 105 F. 2d 17 (C.A. D.C.); cf. *Butterworth* v. *United States ex rel. Hoe*, 112 U.S. 50, 61, holding that a suit under former R. S. 4915 "* * * is not a technical appeal from the Patent Office * * * confined to the case as made in the record of that office, but is prepared and heard upon all competent evidence adduced and upon the whole merits." The determination of the District Court that the claims in suit are met by the prior art is supported by more than substantial evidence (see pp. 16-17 of respondent's brief in the Court of Appeals), and in our view is clearly correct. These findings were affirmed by the Court of Appeals, and "are not to be disturbed unless plainly without support." *General Talking Pictures Corp.* v. *Western Electric Co.*, 304 U.S. 175, 178; see also *supra*, pp. 6-7.

CONCLUSION

For the reasons stated above, it is respectfully submitted that the petition for a writ of certiorari should be denied.

J. LEE RANKIN,
Solicitor General.
GEORGE COCHRAN DOUB,
Assistant Attorney General.
PAUL A. SWEENEY,
ROBERT S. GREEN,
Attorneys.

CLARENCE W. MOORE,
Solicitor,
United States Patent Office.

DECEMBER, 1956.

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No. 523

In the Supreme Court of the United States

OCTOBER TERM, 1956

ALVA G. BLANCHARD, PETITIONER

v.

ROBERT C. WATSON, COMMISSIONER OF PATENTS

PETITION FOR REHEARING ON PETITION FOR WRIT OF CERTIORARI ON THE AFFIDAVIT OF ALVA G. BLANCHARD, PETITIONER

PETITION FOR REHEARING

ALVA G. BLANCHARD
In propria persona
For Petitioner

AFFIDAVIT

There has been a serious miscarriage of justice in the denial of certiorari by the United States Supreme Court in suit No. 523, *Blanchard vs. Watson*, and reconsideration should be given the matter.

The facts appear to have been lost in a legal maze.

The whole case arose by reason of the fact that a different examiner in the Patent Office was assigned a patent application which was a required division of an earlier application. This second examiner made a mistake first of disallowing the claims on a species claim patent that originated in the same original application, by the same applicant.

When it was called to his attention that the disallowed claims were generic and originated in the original application and a subsequent species claim patent could not be cited against them, the examiner then to make his first mistake appear to be right, made his second mistake of holding that the generic claims were not filed until after the species claim patent issued.

When this mistake was called to his attention, that there was a generic claim in the original application and cited the claim to him, he made his third mistake of holding this claim was not in the case and it was cancelled when the species claim patent issued.

When this mistake was called to his attention by showing that it was not a cancellation but was a reservation, quoting the entire sentence:

> "Cancel all claims except claim 14, and applicant reserves the right to amend the cancelled claims and make them the subject matter of divisional applications."

the examiner made his fourth mistake of holding that he could separate this sentence and give effect to the cancellation part of it without giving effect to the reservation part of it.

It is clear that if the original examiner had received the subsequent applications, these mistakes would not have been

made and the only reason this suit has for its existence is that the second examiner made a mistake and then made many more to make his first mistake stand up.

Then when the matter was first presented in the District Court and the prior art patents were injected into the case, I made a special trip to Washington and at a conference with Counsel for the Patent Office said I would like to show him how these old prior art patents were not pertinent at all and if I could do so that he might want to eliminate them. He replied that he wanted them in there. I then asked how he found them. He replied that he simply asked the Patent Office to furnish him some patents that looked like the application in suit.

The Court then made the mistake of considering these old prior art patents that were not cited by the Patent Office even though they were in their records, that were dumped into the records with no testimony whatever as to their pertinency.

I spent a great deal of time and money developing the generic ideas covered by the generic claims in suit, relying on the United States Patent laws for protection in recovering the investment and I have received no protection whatsoever on the main generic ideas expressed by the three generic claims in suit, competitors having infringed them since shortly after the original application was filed.

The small protection afforded by the species claim patent is practically worthless as there are so many ways to avoid it that competitors infringing the generic ideas can only be curbed by the granting of a patent containing the generic claims in question.

In the interests of justice, it is earnestly requested that reconsideration be given this suit.

Respectfully submitted,

Alva G. Blanchard, Petitioner
3618 Fairfield Avenue
Shreveport, Louisiana

December, 1956

I hereby certify that this petition for rehearing is presented in good faith and not for delay, and that the grounds stated herein are restricted to grounds not heretofore presented to this Honorable Court.

ALVA G. BLANCHARD
Petitioner
In propria persona